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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/091,606
Filing Date: March 04, 2002
Appellant(s): WINKING ET AL.

David W. Boyd
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 03/31/2010 appealing from the Office action mailed 12/08/2009.

(1) Real Party in Interest

The examiner has no comment on the statement, or lack of statement, identifying by name the real party in interest in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The following is a list of claims that are rejected and pending in the application:
1-14 and 33-45.

(4) Status of Amendments After Final

The examiner has no comment on the appellant's statement of the status of amendments after final rejection contained in the brief.

(5) Summary of Claimed Subject Matter

The examiner has no comment on the summary of claimed subject matter contained in the brief.

(6) Grounds of Rejection to be Reviewed on Appeal

The examiner has no comment on the appellant's statement of the grounds of rejection to be reviewed on appeal. Every ground of rejection set forth in the Office action from which the appeal is taken (as modified by any advisory actions) is being maintained by the examiner except for the grounds of rejection (if any) listed under the subheading "WITHDRAWN REJECTIONS." New grounds of rejection (if any) are provided under the subheading "NEW GROUNDS OF REJECTION."

NEW GROUND(S) OF REJECTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-14 and 33-45 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per system claims 1-14, claims 1, 8, 10-12 recite features described as "control logic" which in the absence of further limitation, the Examiner considers to be software per se. The claim does not recite that the control logic resides on a non-transitory computer readable medium (having computer readable program instructions or code embodied thereon and configured to control a computer to perform specific functional steps). The lack of recitation of any specific computer readable medium results in a claim that recites functionally descriptive material (defined as "data structures and computer programs which impart functionality when encoded on a computer readable

medium" by the Computer-Implemented Invention Guidelines) without any interrelationships between the data structure and other aspects of the invention that would permit the data structure's functionality to be realized.

Claim 14 recites implementing claim 1 "...in software, hardware or a combination of both." Since software per se is an alternative, this claim is rejected as well.

Claims 2-7, 9, and 13 depend from at least one of the above claims and are thus rejected for similar reasons.

As per method claims 33-45, based on Supreme Court precedent¹ and Federal Circuit decisions, a §101 patent eligible process must (1) be tied to a particular machine (or apparatus) or; (2) transform a particular article to a different state or thing. See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008)(en banc).

To meet prong (1), a method step should positively recite the specific machine or machines that perform the step. Alternatively, to meet prong (2), the method step should positively recite the material that is being changed to a different state, or the subject matter that is being transformed.

¹ See also *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

In this particular case, the claims fail prong (1) because the methods steps of claims 33-45 are not tied to a specific machine. The Examiner notes that the steps could be performed manually or mentally by a person without the use of a machine. Additionally, the Examiner notes that the claims fail prong (2) because the method steps do not transform the underlying subject matter to a different state or thing.

(7) Claims Appendix

The examiner has no comment on the copy of the appealed claims contained in the Appendix to the appellant's brief.

(8) Evidence Relied Upon

2001/0056402	AHUJA	12-2001
5,884,274	WALKER	03-1999
5,285,382	MUEHLBERGER	02-1994
4,650,977	COUCH	03-1987
7,139,731	ALVIN	11-2006
4,774,664	CAMPBELL	09-1988

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-14 and 33-45 rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

As per system claims 1-14, claims 1, 8, 10-12 recite features described as "control logic" which in the absence of further limitation, the Examiner considers to be software per se. The claim does not recite that the control logic resides on a non-transitory computer readable medium (having computer readable program instructions or code embodied thereon and configured to control a computer to perform specific functional steps). The lack of recitation of any specific computer readable medium results in a claim that recites functionally descriptive material (defined as "data structures and computer programs which impart functionality when encoded on a computer readable medium" by the Computer-Implemented Invention Guidelines) without any interrelationships between the data structure and other aspects of the invention that would permit the data structure's functionality to be realized.

Claim 14 recites implementing claim 1 "...in software, hardware or a combination of both." Since software per se is an alternative, this claim is rejected as well.

Claims 2-7, 9, and 13 depend from at least one of the above claims and are thus rejected for similar reasons.

As per method claims 33-45, based on Supreme Court precedent² and recent Federal Circuit decisions, a §101 patent eligible process must (1) be tied to a particular machine (or apparatus) or; (2) transform a particular article to a different state or thing. See *In re Bilski*, 545 F.3d 943, 88 USPQ2d 1385 (Fed. Cir. 2008)(en banc).

To meet prong (1), a method step should positively recite the specific machine or machines that perform the step. Alternatively, to meet prong (2), the method step should positively recite the material that is being changed to a different state, or the subject matter that is being transformed.

In this particular case, the claims fail prong (1) because the methods steps of claims 33-45 are not tied to a specific machine. The Examiner notes that the steps could be performed manually or mentally by a person without the use of a machine. Additionally, the Examiner notes that the claims fail prong (2) because the method steps do not transform the underlying subject matter to a different state or thing.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

² See also *Diamond v. Diehr*, 450 U.S. 175, 184 (1981); *Parker v. Flook*, 437 U.S. 584, 588 n.9 (1978); *Gottschalk v. Benson*, 409 U.S. 63, 70 (1972); *Cochrane v. Deener*, 94 U.S. 780, 787-88 (1876).

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1-4, 13, 14, 33-36, 44, and 45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahuja et al (PG Pub# US 2001/0056402, hereinafter Ahuja) in view of Walker et al (US Pat# 5,884,274, hereinafter Walker) and further in view of Muehlberger et al (US Pat# 5,285,382).

As per claims 1 and 33, Ahuja discloses a system for processing account payments, comprising:

control logic configured to receive one or more payment transactions from a client (Ahuja: [0090]-[0091], i.e. "...method...includes the steps of...receiving bill paying requests..."),

each payment transaction being received in one of at least two submission formats (Ahuja: [0090], i.e. "...receiving bill paying requests...over cellular telephone communication channels...". See "Response to Arguments" section below with regard to Issue III.);

control logic configured to invoke a real-time process to process payment transactions that are determined to be processed on a real-time basis, the real-time process being invoked upon submission of the payment transactions that are determined to be processed on the real-time basis (Ahuja: [0090], i.e. "...debiting the customer's bank accounts substantially in real-time in response to the debit message...);

and

wherein for each payment transaction processed by the real-time process, available credit relative to a corresponding account is adjusted in real-time based on information included in such payment transaction (Ahuja: [0090], reads on "debiting," i.e. after the debit, less credit is available; [0054]);

and

wherein a payment transaction represents either a payment to be credited against a corresponding account or a reversal to be performed against the corresponding account to retract a previously made payment (Ahuja: [0044], reads on "crediting an debiting," i.e. a payment may be received or made, resulting in a credit or debit respectfully.).

and

wherein for a payment transaction that is a payment to be credited against a corresponding account, the available credit to the corresponding account is increased by at least a portion of the amount of the payment received (Ahuja: [0044]. Note that if the bill to be paid is credit card bill, the credit card account will be credited with a payment from the cardholder, the cardholder's available credit will increase by the amount of the payment, i.e. the available credit will reflect the decrease in amount owed by the cardholder to the creditor. [0054], see discussion below in "Response to Arguments" section, with respect to Issue II.)).

Ahuja fails to teach the following feature, however, this is well known in the art as evidenced by Walker who teaches

control logic configured to invoke a batch process to process payment transactions that are determined to be processed on a batch basis, the batch process being invoked at a designated time in a processing cycle without regard to timing of submission of the payment transactions that are determined to be processed on the batch basis (Walker: col 9, lns 5-6);

It would have been obvious at the time of the invention to one of ordinary skill in the art to include the teachings of Walker with those of Ahuja with the motivation of extending the remote, wireless banking services of Ahuja (Ahuja: [0097]) to include the foreign exchange insurance strategy of Walker (Walker: col 1, lns 60 to col 2, ln 24) with the motivation of protecting consumers against currency fluctuations (Walker: col 1, lns 53-54).

Ahuja teaches determining to process payment transactions on a real-time basis, but fails to teach determining whether or not payment transactions should be processed on a batch basis or on a real-time basis as per the following limitation of claim 1:

control logic configured to determine, for each of the payment transactions, whether the payment transaction is to be processed on a batch basis or on a real-time basis.

Walker teaches processing payment transactions either in real-time or in batch (Walker: col 9, Ins 3-6; Fig 3). The features of the claim are suggested because it is inherent in the teachings of Walker that at some point a determination as to which type of processing will be used must be made. However, Walker fails to explicitly teach the features of the claim, which are taught by Muehlberger who teaches

control logic configured to determine, for each of the payment transactions, whether the payment transaction is to be processed on a batch basis or on a real-time basis (Muehlberger: col 5, Ins 29-39; Figs 4 to 6).

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the system of Ahuja with the teachings of Muehlberger with the motivation of extending the remote, wireless banking services of Ahuja (Ahuja: [0097]) to include the transaction clearing functions taught by Muehlberger with the motivation of performing real-time funds collection for transactions above a predetermined amount, and waiting for a time when communication rates are reduced to perform a batch process to collect funds from transactions below the predetermined amount, thus saving on communication costs (Muehlberger: col 1, ln 61 to col 2, ln 2).

As per claims 2 and 34, Ahuja teaches the system according to claim 1 wherein

upon adjusting the available credit relative to the corresponding account in real-time, the available credit is immediately accessible to an account holder of the corresponding account (Ahuja: [0090]).

As per claims 3, 4, 35, and 36, Ahuja teaches the system according to claim 1 wherein

(claims 3 and 35) a payment transaction represents a payment received from an account holder toward an amount owed on a credit account (Ahuja: [0054]).

and

(claims 4 and 36) the system according to claim 3 wherein for each transaction payment processed by the real-time process, if such payment transaction represents a payment to be credited against the corresponding account, a payment amount identified in such payment transaction is applied in whole or in part to the available credit relative to the corresponding account in real-time in accordance with evaluation results derived from evaluating one or more attributes relating to the corresponding account (Ahuja: [0044]. See also "Response to Arguments" section below with respect to Issue V.).

As per claims 13 and 44, Walker discloses the system according to claim 1 wherein

the corresponding account is a credit card account (Walker: Figs 3 to 5; col 6, lns 7-14).

As per claims 14 and 45, Ahuja discloses the system according to claim 1 wherein

the system is implemented in software, hardware or a combination of both (Ahuja: [0069]-[00070]).

4. Claims 5-7 and 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahuja in view of Walker as applied to claim 3 above, and further in view of Couch (US Pat# 4,650,977, hereinafter Couch).

As per claims 5-7 and 37-39, Ahuja and Walker fail to explicitly teach the features of these claims, but these features are well known in the art as evidenced, for example, by the teachings of Couch.

The claims recite updating delinquency status in real-time depending on whether or not an account transaction debits ("reversal") or credits the account. Updating delinquency status is well known in the art as taught by Couch (Couch: col 6, lns 46-51).

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the system of Ahuja with those of Couch with the motivation of updating delinquency status as taught by Couch (Couch: col 6, lns 46-51), in real-time, as taught by Ahuja (Ahuja: [0090]-[0091]).

5. Claims 8-10, 12, and 40-42 and are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahuja in view Walker of as applied to claim 1 above, and further in view of Alvin (US Pat# 7,139,731).

As per claims 8, 9, 40, and 41, Ahuja and Walker fail to explicitly teach these features, but the are well known in the art as evidenced by the teachings of Alvin who teaches the system according to claim 1 further comprising:

(claims 8 and 40) control logic configured to update in real-time one or more fraud attributes relating to the corresponding account for each payment transaction processed by the real-time process based on information included in the payment transaction.

(claims 9 and 41) the system according to claim 8 wherein the one or more fraud attributes are forwarded to a fraud prevention system to allow more timely monitoring of potential fraudulent activities concerning the

corresponding account (for both claims, see (Alvin col 8, section labeled "Multi-Level Fraud Detection.")).

(claims 10 and 42) the system according to claim 1 further comprising:

control logic configured to forward information relating to each payment transaction processed by the real-time process including the available credit relative to the corresponding account to customer service (Alvin: col 7, Ins 33-35, col 8, Ins 47-50, and col 9, Ins 17-21).

(claim 12) the system according to claim 1 further comprising: control logic configured to inform the client about status of the payment transactions processed by the real-time process (Alvin: col 10, section labeled "Customer Service").

It would have been obvious at the time of the invention to modify the system of Ahuja with the teachings of Alvin with the motivation of providing a higher level of risk management by utilizing a fraud-check system not exclusively dependent on commercially available services (Alvin: col 3, Ins 53-59).

6. Claims 11 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ahuja in view of Walker as applied to claim 1 above, and further in view of Campbell.

As per claims 11 and 43, Ahuja and Walker fail to disclose the teachings of the claim, however, these features are well known in the art as evidenced by Campbell who discloses the system according to claim 1 further comprising:

control logic configured to forward information relating to each payment transaction processed by the real-time process including the available credit relative to the corresponding account to collections (Campbell: Figs 10B to 20; col 23, lns 5-28).

It would have been obvious at the time of the invention to one of ordinary skill in the art to modify the teachings of Ahuja with those of Campbell to determine the delinquency status of an account (Campbell: col 20, lns 36-47).

(10) Response to Argument

Issue 1

Beginning on page 8 of the Appeal Brief, referring to claim 1, Applicant first appears to argue that the applied primary Ahuja reference is not relevant because

"Ahuja's system is not a payee, and has no control over what any payee once the payee receives the funds."

In response, the Examiner first notes that there is no language in the claim specifying the involvement of a payee, but rather the language only specifies that "payment transactions" are received from a "client." Since the claim is silent as to whom or what is the recipient of the transactions, there is no requirement that the reference teach this aspect. As an aside however, Applicant might note however that in Ahuja [0090]-[0091], for example, making a payment to a payee is explicitly taught. In addition, Ahuja: [0044] teaches a customer's account may be credited or debited. In the credit situation, the customer would serve as a payee receiving a payment resulting in the account being credited for the amount of the received payment.

Similarly, the claim language does not discuss what a payee does once funds are received, and likewise, there it is not necessary for this teaching to be supplied by the reference.

Applicant further argues that

"Ahuja provides no information about how or when the payment would be posted to the consumer's credit card account."

It is not clear which feature of claim 1 is being specifically addressed here, however, in response to Applicant's assertion, note that the reference is replete with examples of a payment transaction being processed "substantially in real-time," whereupon, "debiting the customer's bank account substantially in real-time," also occurs (Ahuja: [0090]). The Examiner considers this real-time debiting (or crediting) of a customer's account to be a clear indication of when a payment is posted to a customer's account.

As another aside, note that claim 1 does not specifically provide the limitation of a "credit card account" as referred to above by Applicant. Nonetheless, note Ahuja [0054] which teaches a smart card being used in conjunction with a credit-authorization process, i.e. the account is a type of credit card account.

On page 9, Applicant next appears to argue that Ahuja does not teach a payment transaction because,

"As is explained in Applicants' specification, a payment transaction is **usually** a transaction in which a credit customer sends funds to the credit issuer in order to pay down the balance owed to the issuer. (Specification paragraphs [0008], [0018])."

The Examiner notes that this language does not constitute a limiting definition of a "payment transaction," i.e. Applicant merely states what Applicant considers a payment

transaction to "usually" be. In response to this argument, the Examiner notes that the Ahuja reference also teaches a type of payment transaction (though perhaps not the type intended by Applicant), and it would be improper for the Examiner to read limiting language into the claim when an artisan of ordinary skill could make a reasonable alternative interpretation of this feature, such as the payment transaction provided by the teachings of Ahuja.

Issue 2

On page 9, Applicant argues that Ahuja does not teach the features recited in claim 1,

wherein for each payment transaction processed by the real-time process,
available credit relative to a corresponding account is adjusted in real-time based
on information included in such payment transaction;

and

wherein for a payment transaction that is a payment to be credited against a
corresponding account, the available credit to the corresponding account is
increased by at least a portion of the amount of the payment received.

Applicant argues that,

"Ahuja's system is not in a position to adjust the credit of any account issued by a payee. Only the account issuer can adjust the available credit, and Ahuja's system is not an account issuer,"

and

"Ahuja's system cannot increase any available credit."

In response, the Examiner notes the previously identified teaching of Ahuja that upon payment of a bill, the customer's account is debited in real-time (e.g. Ahuja: [0091]) and further asserts that it is evidently clear that the financial institution hosting Ahuja's system (see for example Ahuja: Fig 1, item 10) would be an account issuer.

Ahuja: [0054] further teaches that the disclosed system can be used as a "credit authorization" system by the customer in that a smart card is credited with funds, while a corresponding funds-supplying account is debited. The amount of credit is limited by the amount of funds existing in the account, thus the Examiner considers that when the account is debited, for example by a payment made using the system, the available credit of the corresponding customer account is adjusted in real-time based on the payment transaction to reflect the new balance of the account.

Issue III

On page 10 of the Appeal Brief, Applicant appears to argue that the feature of claim 1 which recites

each payment transaction being received in one of at least two submission formats

is not taught because only one communication channel is disclosed where at least two are required, and furthermore because a communication channel is not a submission format.

Regarding the latter, the Examiner first notes that Applicant merely asserts that a

"channel over which the request is received is not the same as a format,"

but provides no justification for the assertion.

In response, the Examiner respectfully disagrees that the cited teachings of Ahuja do not teach a type of submission format. In particular, Ahuja: [0090] teaches payment transactions being submitted (e.g. "bill paying requests") over cellular telephone communication channels. One of ordinary skill in the art would well recognize that information submitted over such a channel is in a particular format, as opposed to other types of formats (e.g. land-line telephone formats, or wide-area network formats, Ahuja: [0044]-[0046]).

In response to the former issue, note that Ahuja: [0036] and [0081] specifically teach that there are at least three “communications modes” used by the system which the Examiner considers to be different types of submission formats. Ahuja: [0085] further teaches that another type of submission format would include a payment transaction utilizing PKI encryption. Utilization of a smart card at the front end of the process might further be considered to be a type of submission format, Ahuja: [0054].

Issue IV

Further on page 10 of the Appeal Brief, Applicant next appears to argue that the secondary references of Walker and Muehlberger apparently because they “purchase transactions” and not “payment transactions.” In response, the Examiner respectfully disagrees and reiterates (see discussion for Issue I above) that a purchase transaction is considered to be a type of payment transaction. In addition, it must be noted that these references are brought in to teach aspects associated with batch versus real-time processing, and the selection between the two processes to apply to certain transactions, thus it is improper to attack these references for something they were not being used for.

Issue V

On page 11 of the Appeal Brief, Applicant argues that the features of corresponding claims 4 and 36 are not taught by the applied references. In particular, Applicant argues that the aspect of the claim which recites

“...a payment amount identified in such payment transaction is applied in whole or in part to the available credit relative to the corresponding account in real-time **in accordance with evaluation results derived from evaluating one or more attributes relating to the corresponding account,**”

is not taught, particular the “attributes” feature. To support this argument, Applicant appears to rely on the disclosure of Applicant’s specification to define what is meant by an attribute, for example page 6, lns 7-15 which recites

“The payment amount of the batch payment transaction to be applied to the available credit varies depending on a number of factors, **such as, the attributes** or conditions of the credit account. **For example**, if the credit account has a history of bounced check payments and the payment amount is made in check, then the available credit may not be adjusted until the check is cleared. On the other hand, if the payment amount was made in cash, then the full payment amount may be applied to the available credit. In another example, the amount of available credit to be adjusted is determined by an external system in order to minimize fraud. At 36, the corresponding credit account is updated.”

The Examiner notes that the language of the specification provides an example of an attribute, but does not provide a strictly limiting definition. As such, it would be

inappropriate for the Examiner to accept this language as limiting, but must rather construe the claim broadly, as would be reasonable to one of ordinary skill in the art. Thus the Examiner notes Ahuja teaches that a customer's account is adjusted in real-time (either a credit or debit, Ahuja: [0044]), after evaluating the account with respect to, for an attribute such as "some biometric parameter" (Ahuja: [0078]).

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

(12) Comments

This examiner's answer contains a new ground of rejection set forth in section (9) above. Accordingly, appellant must within **TWO MONTHS** from the date of this answer exercise one of the following two options to avoid sua sponte dismissal of the appeal as to the claims subject to the new ground of rejection:

(1) Reopen prosecution. Request that prosecution be reopened before the primary examiner by filing a reply under 37 CFR 1.111 with or without amendment, affidavit or other evidence. Any amendment, affidavit or other evidence must be relevant to the new grounds of rejection. A request that complies with 37 CFR 41.39(b)(1) will be entered and considered. Any request that prosecution be reopened will be treated as a request to withdraw the appeal.

(2) Maintain appeal. Request that the appeal be maintained by filing a reply brief as set forth in 37 CFR 41.41. Such a reply brief must address each new ground of rejection as set forth in 37 CFR 41.37(c)(1)(vii) and should be in compliance with the other requirements of 37 CFR 41.37(c). If a reply brief filed pursuant to 37 CFR 41.39(b)(2) is accompanied by any amendment, affidavit or other evidence, it shall be treated as a request that prosecution be reopened before the primary examiner under 37 CFR 41.39(b)(1).

Extensions of time under 37 CFR 1.136(a) are not applicable to the TWO MONTH time period set forth above. See 37 CFR 1.136(b) for extensions of time to reply for patent applications and 37 CFR 1.550(c) for extensions of time to reply for ex parte reexamination proceedings.

Respectfully submitted,

/M. A. G./

Examiner, Art Unit 3693

/Jason M Borlinghaus/
Primary Examiner, Art Unit 3693
July 7, 2010

Conferees:

/Jason M Borlinghaus/
Primary Examiner, Art Unit 3693

/James A. Kramer/
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